

REPORTABLE

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Appeal Decree/TA/154/2002/Bharatpur

1. Shri Ram Khiladi son of Shri Harhans,
2. Shri Harman son of Shri Rangi alias Firangi
by caste Gurjar resident of Bhad Ka Nagla, Mazra Peepari, Tehsil Bayana
District Bharatpur.

....Appellant

Versus

The State of Rajasthan through Tehsildar, Bayana, Bharatpur.

....Respondent

D.B.

**Shri Bajrang Lal Sharma, Member
Shri Chain Singh Panwar, Member**

Present:-

1. Shri Khadag Singh: Counsel for the appellant
2. Shri R.K.Gupta: Govt. Advocate for the Respondent State,

JUDGMENT

Dated 18-4-2012

This appeal has been preferred by the appellants under Section 224 of the Rajasthan Tenancy Act, 1955 (hereinafter mentioned as the Act) being aggrieved by the judgment and decree passed by the learned Settlement Officer - cum - Revenue Appellate Authority, Bharatpur on 26.3.2002 in appeal No.87/94.

2. The thumbnail sketch of the appeal in hand is that the appellants filed a regular suit under Section 88 and 188 of the Act against the State of Rajasthan in the court of Assistant Collector, Bayana (Bharatpur) in the year 1991. The trial court decreed the suit on 30-9-94 and declared the appellants as khatedar of khasra No.225 measuring 21 bighas 08 biswas situated in village Peepari on the basis of his long possession. The State Govt. filed the first appeal assailing the judgment and decree passed by the trial court dated 30.9.1994. The appellate court accepted the appeal

filed by the State of Rajasthan and quashed the impugned judgment and decree by its judgment dated 26.03.2002. The appellants has preferred this second appeal before this court challenging the judgment and decree passed by the first appellate court.

3. Heard the learned counsels of the parties.

4. The learned counsel of the appellants contended that the impugned judgment and decree passed by the first appellate court have been passed in complete ignorance of the legal provisions and material evidence available on file. He further submitted that the land in question is an ancestral land and the appellants are in possession on the disputed land prior to Svt.2012. The disputed land was initially cultivated by late Shri Narayan and Shri Harhans and the appellants are the only legal heir of Shri Narayan. He also argued that we were the *malik* of the disputed land and the provisions of Resumption of Jagir Act do not apply on this disputed land. He urged the court that the trial court justly decreed the suit as the appellants and their ancestors were *maliks* and are in continuous possession of the disputed land. He finally prayed for quashing the impugned judgment and decree passed by the first appellate court.

5. The learned Govt. Advocate for the respondent State contended that the judgment and decree passed by the trial court in favour of the appellants was against the basic principles of law and the trial court misused its jurisdiction by granting tenancy rights on the disputed land which was pasture land. He also argued that there is no familial connection between Late Shri Narayan and Shri Harhans with the appellants. There is no authentic pedigree and evidence which can establish the direct relationship of appellants with Late Shri Narayan and Harhans. He submitted that there was no documentary evidence on file which can prove long adverse possession of the appellants for more than 30 years but the trial court accorded tenancy rights to the appellants on the basis of adverse possession. He argued that no notice under Section 80 of the Civil Procedure Code was given to the State and the appellants were only a trespasser on the pasture land and that too for only 2-3 years. He termed the decree passed by the trial court as illegal & perverse. He

finally stated that the judgment and decree passed by first appellant court are just and proper and hardly require any interference.

6. We gave thoughtful consideration to the contentions raised by the learned counsels of the parties. We also perused the available record.

7. The record of the trial court categorically manifests that the appellants/plaintiffs filed a regular suit under Section 88 and 188 of the Act against the State of Rajasthan in the court of Assistant Collector, Bayana. The four pages casually handwritten plaint filed by the plaintiffs reads that the plaintiffs are in possession of the disputed land since the time of their ancestors and the State has threatened to eject them. There is no pedigree or any explanation which can support the relationship of the appellants with Late Shri Narayan son of Shri Kalle (the original possessor on the disputed land) and Shri Harhans. The written statement on behalf of State was also filed before the trial court. The trial court framed the following issues in this case:-

- (i) Whether the plaintiffs are entitled for getting their khatedari rights declared on khasra no.225 measuring 21 bighas 08 biswas of land situated in village Peepari ?
- (ii) Whether the plaintiffs are entitled for restraining the defendant State by a decree of perpetual injunction ?
- (iii) Relief.

8. In this case, undisputedly, the plaint does mentions of notice under Section 80 of the Civil Procedure Code but such notice was not given as per the provisions of the code. There is no affidavit or verification available on file which can support the facts narrated in the plaint. The averments in the plaint or any other evidence on file does not establish the link that appellants have any relationship with Late Shri Narayan and Harhans who entered as *malik* of khasra no.225 of village Peepari in Svt.2010 (the year 1953). The plaintiffs have filed an affidavit belatedly on 28.9.1994 showing their relationship with Shri Narayan and Shri Harhans. But as per the pedigree shown in the affidavit other persons who are alive and related to late Shri Narayan and Harhans have not been impleaded as party in

this case. The pedigree shown in the affidavit also manifests that Late Shri Narayan and Late Shri Harhans are not real brothers.

9. The trial court has decided both the issues in favour of the plaintiffs and decreed the suit on the basis of adverse possession of the plaintiffs on the disputed land for more than 12 years. This is also very significant to mention here that the plaintiffs did not claim tenancy rights on the basis of adverse possession in their plaint, nor there was any issue framed on this point.

10. We have carefully studied the judgments and decrees passed by both the lower courts and also scanned the evidence available on file. The findings of this court on the issues framed in this case are as under :-

Issue No.1 :

Whether the plaintiffs are entitled for getting the tenancy rights declared on khasra no.225 measuring 21 bighas 08 biswas of village Peepari ?

The plaintiffs have claimed tenancy rights on the disputed land on the basis of long possession. The plaintiffs have produced jamabandi Svt.2010 and 2014. In jamabandi Svt.2010 the name of Shri Narayan & others has been entered as *malik* on khasra no.225 measuring 21 bighas 08 biswas only along with other khasra nos. in jamabandi Svt.2014. The khasra nos. 225 along with other 7 khasra nos. are entered in name of Shri Budha and others as Jagirdar/Biswedar and name of the cultivator is *Makbuje Malkan*. In khasra of Svt.1999-2002 name of Shri Narayan and others are entered as *malik* or cultivator. The plaintiff Shri Harhans has also submitted an order of ejectment passed by Naib Tehsildar, Bayana under Section 91 of the Rajasthan Land Revenue Act which reveals that appellant trespassed on khasra no.225 measuring 5 bighas and 5 biswas. The appellant had

requested the Tehsildar for regularization of this 5-05 bighas of land. He has also produced 2 cash receipts, which do not prove whether these receipts have any connection with the disputed land ? The plaintiffs did not mention even name of Late Shri Narayan or Shri Harman and his relationship with them in the plaint and his witnesses do not utter a word about their relationship. They have simply filed an affidavit at a belated stage in the trial court explaining their pedigree and relationship with Shri Narayan and Harman. Their witnesses or any other documentary evidence on file do not reveal any reliable fact about their relationship with Shri Narayan or Harman. The plaintiff also chose not to implead other living successors of Narayan and Harman as party in the suit for reasons best known to him.

This is also undisputed that the land in question is pasture land on the day of filing suit but the Gram Panchayat has not been made party in this suit. We are of the considered view that no pasture land can be given in tenancy of some individual without affording an opportunity of hearing to the Gram Panchayat. It is also pertinent to mention here that Section 16 of the Act prohibits tenancy rights on such lands. We are also aware that systematic land records are being maintained in Bayana Tehsil since 1955. This suit has been filed in the year 1993. The plaintiffs sensible adults at that time as per their own statements before the trial court. Therefore, the plaintiff could have filed documentary evidence of his possession on the land in question since 1955 to 1993 i.e. about 38 years. There is no record which can prove his continuous and open possession on the land in dispute. We hold that when the annual registers pertaining to the land in question are being systematically maintained by the State why the case should be decided on indirect oral evidence. The trial court was under solemn obligation to call for such annual registers maintained by the State in larger interest of justice before passing any such judgment. In our

considered view the trial court's finding on this issue is not supported by any independent and reliable evidence. The trial court has made out a case of adverse possession on his own to give undue benefit to the plaintiffs. The plea of adverse possession was not mentioned in the plaint and no issue was framed on this aspect either.

As discussed above we hold that the disputed land is entered as pasture land in jamabandi since 17.5.1968 and the long possession of the plaintiffs on this land is not proved by reliable documentary evidence. When systematic land records are available, reliance on indirect oral evidence is not justified. Therefore the plaintiffs are not entitled for getting their tenancy rights declared on the disputed land which is classified as a pasture land in revenue records. In the opinion of this court the finding on this issue goes against the plaintiffs.

Issue No.2:

Whether the plaintiffs are entitled for restraining the defendant State by perpetual injunction ?

As discussed above, the land in dispute is pasture land since 1968 and encroachment of the plaintiffs on small patch of the disputed land for 2-3 years does not make them eligible for obtaining a decree pertaining to perpetual injunction against the State. This is an established legal position that pasture land belongs to the local Gram Panchayat and the Gram Panchayat has not been made party in this case, nor the order of entering the disputed land as pasture land has been challenged. A trespasser has no entitlement for permanent injunction against the State on the pasture land which is a community land. In such circumstances, the inference drawn by the trial court on this issue is baseless, illegal and perverse. We decide this issue against the plaintiffs.

11. This has been a peculiar case where the trial court has made out an imaginary case to accord undue advantage to the plaintiffs by granting

tenancy rights on 21 bighas 08 biswas of pasture land. The trial court did not analyse the evidence available on file which nowhere indicates that the plaintiffs had adverse possession on the land in question. The trial court did not care to see whether the plaintiffs have any connection with Late Shri Narayan and others and how they alone are entitled for such tenancy rights. The trial court has been grossly negligent in deciding this case which can be termed as miscarriage of justice and abuse of court jurisdiction just to favour an individual.

12. The land involved in this case is pasture land. The pasture land is a community land which is used by the community at large for cattle grazing and other allied activities. Such lands are managed by the local bodies of the State. Hon'ble Apex Court has observed in Jagpal Singh & Ors. V/s State of Punjab & Ors. (2011(2) RLW 389 SC) as under :

We find no merit in this appeal. The appellants herein were trespassers who illegally encroached on to the Gram Panchayat land by using muscle power/money power and in collusion with the officials and even with the Gram Panchayat. We are of the opinion that such kind of blatant illegalities must not be condoned. Even if the appellants have built houses on the land in question they must be ordered to remove their constructions, and possession of the land in question must be handed back to the Gram Panchayat. Regularizing such illegalities must not be permitted because it is Gram Sabha land which must be kept for the common use of villagers of the village. The letter dated 26.9.2007 of the Government of Punjab permitting regularization of possession of these unauthorized occupants is not valid. We are of the opinion that such letters are wholly illegal and without jurisdiction. In our opinion such illegalities cannot be regularized. We cannot allow the common interest of the villagers to suffer merely because the unauthorized occupation has subsisted for many years.

emphasis supported.

13. In light of the above pronouncement of the Hon'ble Apex Court we are of the considered opinion that the judgment passed by the first appellate court does not warrant any intervention and we hold that the

decree passed by the trial court is perverse and illegal which has rightly been quashed. Consequently, this appeal fails and hence is dismissed.

14. Before we part we would like to direct Tehsildar, Bayana to eject the plaintiffs from the pasture land in question by adopting due process of law and hand over the possession of the disputed land to the Gram Panchayat.

15. As discussed above, this second appeal is dismissed and the judgments & decree passed by the first appellate court are upheld.

16. Pronounced in the open court.

(Chain Singh Panwar)
Member

(Bajrang Lal Sharma)
Member